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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1937.

No. 647.

BATES MANUFACTURING COMPANY, PETITIONER,

v.

UNITED STATES OF AMERICA.

On Petition for Certiorari to the United States Circuit Court of Appeals for the First Circuit.

BRIEF OF AMICUS CURIAE.

THEODORE B. BENSON,
917 Southern Building,
Washington, D. C.
Amicus Curiae.

CHARLES E. FOSTER, JR.,
917 Southern Building,
Washington, D. C.
JOHN JENNINGS, JR.,
Bankers Trust Building,
Knoxville, Tennessee,
Of Counsel.

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CITATIONS.

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v.

UNITED STATES OF AMERICA.

ON PETITION FOR CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

BRIEF OF AMICUS CURIAE.

The undersigned respectfully petitions this Honorable Court for leave to file a brief as amicus curiae in the above-entitled cause. The Solicitor General and counsel for the petitioner have assented in writing, as indicated by letters filed with the Clerk of this Court.

This application is made by the undersigned as counsel for the petitioner in the case of *Pinnacle Mills, through J. F. Smith, Receiver*, v. *United States of America*, now pending before the District Court of the United States for the Eastern District of Tennessee, Northeastern Division, on the defendant's motion to dismiss the petition.

Respectfully submitted,

THEODORE B. BENSON.

The District Court held suit was not "begun" by filing the verified petition and dismissed the cause of action.[4] The Court of Appeals affirmed.[5]

It is conceded that suit in the Court of Claims is "begun" when the petition is filed. Yet, it is insisted that suit is not "begun" in the District Court when the petition is filed although the Court of Claims and the District Courts are given concurrent jurisdiction by the Tucker Act. Consideration of the history and language of the statute leads us to a different conclusion.

Section 10 of the Act of March 13, 1863,[6] provides "That every claim against the United States, cognizable by the Court of Claims, shall be forever barred *unless the petition setting forth a statement of the claim be filed . . . within six years after the claim first accrues . . . .*"

When the Tucker Act in 1887 greatly expanded the jurisdiction of the Court of Claims and gave District Courts concurrent jurisdiction in *all* cases involving certain amounts, its limitation in *both the Court of Claims and the District Courts* provided:

" . . . no suit against the government of the United States shall be allowed under this Act unless the same *shall have been brought within six years after the right accrued . . . .*"

The substantial rights of claimants are to be governed alike whether suit is brought in the Court of Claims or the District Court. The author of the Tucker Act in declaring the statute of limitations applicable alike "to any or all" of the cases arising under the Act drew no distinction between suits brought in the District Court and in the Court of Claims.[7]

The purpose of giving the District Courts concurrent jurisdiction with the Court of Claims was to provide additional opportunity for the consideration and determination of claims that had "long pressed upon the consideration of Congress"[8] and to permit suit to "be brought in the District where the parties reside."[9] After

[4] 19 Fed. Supp. 526.

[5] — F. (2d) —.

[6] 12 Stat. 765, 767.

[7] Congressional Record and Appendix, 49th Cong., 2nd Sess., March 3, p. 2679.

[8] House Report No. 1077, 49th Cong., 1st Sess., by Mr. Tucker on the Tucker Bill.

[9] Congressional Record and Appendix, 49th Cong., 2nd Sess., March 3, p. 2679.

discussing the benefits of previous legislation creating and extending the jurisdiction of the Court of Claims, the Committee on the Judiciary reported to the House:

"The history of this legislation and its results have been given to show how much of benefit has been done in the satisfactory decisions of claims against the Government and in relief of the Congress. But it has long been felt that the benefits could be made much greater by extending the jurisdiction of the Court. . . . It is needless to say more than has already been intimated as to the general policy of this legislation. The large mass of business now before Congress growing out of private claims consumes its time year after year in committee work, rendered useless by the lack of time to consider and pass upon them. Just claims are painfully deferred without interest, and the credit of the Government, so strictly upheld upon its bonded debt, is justly censured in respect to its honest and private claims."[10]

In response to the needs disclosed by this report Congress passed the Tucker Act, manifestly intending to provide adequate opportunity for expeditious and orderly determination of claims against the Government. This Act not only expanded the jurisdiction of the Court of Claims, but, for the first time, gave District Courts general authority to hear and determine claims against the Government. Relief of existing claim congestion and prevention of future congestion obviously demanded an integrated jurisdictional plan by which the Court of Claims and District Courts could afford equal opportunities for expeditious and fair trials of like claims within the jurisdictional amount of the District Courts. The erection of barriers to recovery in the District Courts which did not exist in the Court of Claims would have tended to defeat the prime objectives of the Act. Uniformity and equality in substantial rights and privileges—for claimants in both forums—were essential features in the system. Distinctions between the opportunities for recovery afforded in the two forums would have tended to mar the symmetry of the plan and to impair its effective and successful operation. As to substantial rights, Congress evidently meant to give claimants an identical status in both Courts where the amount in controversy was included in the jurisdiction of both. We find no support in the background or objective of the Act for a construction under which a claimant's rights would be preserved

[10] House Rep. No. 1077, *supra*, pp. 3-4.

by filing a petition in the Court of Claims, but would be lost—without additional action—in the District Court.

As said by this Court in *United States* v. *Greathouse*, 166 U. S. 601, 606:

" . . . it was not contemplated that the limitation upon suits against the Government in the District . . . Courts of the United States should be different from that applicable to like suits in the Court of Claims."

As used in this statute the word "begun" should be given its ordinary and accustomed meaning. To begin is to start; to institute; to initiate; to commence. This suit was begun—within two years after the refund claim was disallowed—when the petition was filed in court in good faith. Notice was mailed the Attorney General and the District Attorney was promptly served—both within four days after the verified petition was filed. Under these circumstances, we do not consider what would be the effect of lack of diligence in obtaining service.[11] The judgment in the court below was not in harmony with the views here expressed and is

Reversed.

Mr. Justice CARDOZO and Mr. Justice REED took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

[11] Compare, Linn Timber Co. v. United States, 236 U. S. 574, 578.

IN THE

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No. 647.

BATES MANUFACTURING COMPANY, *Petitioner*,
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UNITED STATES OF AMERICA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

BRIEF OF AMICUS CURIAE.

Preliminary Statement.

This brief is filed in behalf of Pinnacle Mills. That corporation is plaintiff in a suit filed under the Tucker Act, U. S. C., Title 28, Secs. 41(20), 762 and 763, to recover an alleged overpayment of income tax, now pending before the United States District Court for the Eastern District of Tennessee.

In that case counsel for the defendant, the United States, has moved to dismiss the petition on the ground that the cause of action is barred by the statute of limitations because not "begun" within the limitation period in Section 3226 of the Revised Statutes, as amended, the specific ground being that suit is not "begun" until service is actually made on the district attorney.

Pinnacle Mills filed its petition and complied with the provisions of Section 5 of the Tucker Act, U. S. C., Title 28, Sec. 762, within the two year period defined in Section 3226 of the Revised Statutes and the plaintiff further complied with

the requirements of Section 6 of the Tucker Act, U. S. C., Title 28, Sec. 763, by filing an affidavit of mailing a copy of the petition to the Attorney General of the United States and by causing process to issue, a copy of the petition to be placed in the hands of the marshal "to be served" on the district attorney, and paid the marshal's fee. Service by the marshal on the district attorney was, however, not actually made until after the expiration of the limitation period defined in Section 3226 of the Revised Statutes, but before the return day of the writ.

THE ARGUMENT.

In *Leo N. Munro* v. *United States*, October Term, 1937, No. 218, the plaintiff timely filed a praecipe for the issuance of summons which was timely served on the United States Attorney but no petition, within the purview of Section 5 of the Tucker Act, was filed until after the expiration of the statutory period for suit. In *Bates Manufacturing Company* v. *United States*, October Term, 1937, No. 647, on petition for certiorari, a petition was timely filed but service was not actually made on the district attorney until shortly after the expiration of the statutory period. The question presented in both cases as well as in *Pinnacle Mills* v. *United States* is, when is suit "begun" or "brought" within the meaning of the applicable statute of limitation? In *Pinnacle Mills* v. *United States*, the plaintiff contends that literal compliance was made with all requirements of the Tucker Act, when the plaintiff timely placed itself within the authority of the court, by filing its petition and the affidavit of mailing to the Attorney General and by causing process to issue to be served by the marshal under authority of the court.

In the memorandum of argument filed by counsel for the defendant with the District Court the decisions of the United States Circuit Courts of Appeals in both *Munro* v. *United States* and *Bates Manufacturing Company* v. *United States* are relied on and urged as authority for the contention that suit was not begun within the limitation period.

Counsel for Pinnacle Mills believes and respectfully submits that, in *Munro* v. *United States* this Court will be required to

decide whether suit can be brought without the timely filing of a petition, and in *Bates Manufacturing Company* v. *United States*, the petition having been timely filed, this Court should grant the writ in order that it may be decided what further steps, if any, are necessary to begin a suit under the Tucker Act. It is in the latter question that the plaintiff in *Pinnacle Mills* v. *United States* is vitally interested and, therefore, prays that the writ be granted in the *Bates Manufacturing Company* v. *United States*, in order that this Court may have squarely before it the question, when a suit is "begun" within the meaning of Section 3226 of the Revised Statutes in a case in which the first step is the filing of a petition as required by Section 5 of the Tucker Act.

Should the decision below in *Bates Manufacturing Company* v. *United States* be allowed to stand, it would doubtless be followed by the District Court in *Pinnacle Mills* v. *United States* in direct conflict with the decision of this Court in the *Mill Creek & Minehill Nav. & R. Co.* v. *United States*, 251 U. S. 539, 40 S. Ct. 118, Aff'g 246 Fed. 1013, in which precisely the same question that counsel for the United States raise in their motion to dismiss in the District Court was squarely presented to this Court in assignments of error in petition for review. It is necessary to go to the record to see what issues were presented in *Mill Creek & Minehill Nav. & R. Co.* v. *United States*. The decision would also be in conflict with the decision of this Court in *Linn & Lane Timber Company* v. *United States*, 236 U. S. 574, 35 S. Ct. 440, 59 L. Ed. 725, affirming 196 Fed. 593, in which this Court held that a suit is begun when the bill is filed and subpoena issued and delivered to the marshal for service before the running of this statute, reasonable diligence being shown for actual service thereafter. In both of these cases this Court held that it is sufficient to cause process to issue and be delivered to the marshal, to be later served by exercise of reasonable diligence.

In the case of *United States* v. *Adams*, decided by the Circuit Court of Appeals for the Fifth Circuit on December 17, 1937, and unofficially reported in 1937 C. C. H. Federal Tax Service, Volume 4, Paragraph 9608, it was held that an action by the United States to establish liability against stockholders of a

liquidated corporation for the taxes of the corporation was begun within the meaning of the applicable Statute of Limitations when the bill of complaint was filed with a bona fide intention to prosecute the suit, and that it was not necessary that process issue within the limitation period.

Respectfully submitted,

THEODORE B. BENSON,
Amicus Curiae.

CHARLES E. FOSTER, JR.,
JOHN JENNINGS, JR.,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

No. 647.—October Term, 1937.

Bates Manufacturing Company, Petitioner, *vs.* United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

[March 28, 1938.]

Mr. Justice Black delivered the opinion of the Court.

The Revenue Act of 1926[1] provides that "No suit . . . shall be maintained *in any court* for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, . . . unless such suit . . . is begun within two years after the disallowance of . . . such claim . . . ."

The Tucker Act of March 3, 1887[2] as amended, gives concurrent jurisdiction to the District Courts and the Court of Claims in suits against the United States including those for recovery of erroneous or illegally collected taxes.[3] Section 5 of the Tucker Act requires a plaintiff bringing suit against the government in the District Court to "file a petition, duly verified with the clerk of the respective court having jurisdiction of the case." Section 6 requires "that the plaintiff . . . cause a copy of his petition . . . to be served upon the district attorney . . . , and . . . mail a copy . . . to the Attorney General . . . , and cause to be filed with the clerk of the court . . . affidavit of such service and . . . mailing . . . ."

March 22, 1927, the petitioner's claim for tax refund was disallowed. March 21, 1929, *within two years after the disallowance*, a duly verified petition was filed in the District Court claiming the refund. March 25, 1929, two years and four days after the disallowance, the petition was served on the United States Attorney and mailed to the Attorney General.

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[1] c 37, 44 Stat. 9, Sec. 1113.
[2] c. 359, 24 Stat. 505, 506.
[3] U. S. C. Title 28, Sec. 41 (20), (Judicial Code Sec. 24 (20) as amended).